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PTO/SB/33 (07-05)

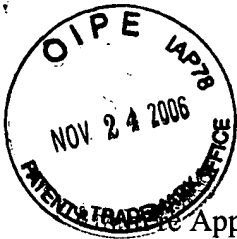
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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)									
		121277-1/YOD (GERD:0598)									
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		10/630,139	July 31, 2003								
		First Named Inventor									
		Eric Michael Breitung									
		Art Unit	Examiner								
		1763	Zervigon, Rudy								
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <table border="0"><tr><td><input type="checkbox"/> applicant/inventor.</td><td><u>PG</u> Signature</td></tr><tr><td><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</td><td>Patrick S. Yoder Typed or printed name</td></tr><tr><td><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>37,479</u></td><td>(281) 970-4545 Telephone number</td></tr><tr><td><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</td><td>November 20, 2006 Date</td></tr></table> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <p><input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.</p>				<input type="checkbox"/> applicant/inventor.	<u>PG</u> Signature	<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)	Patrick S. Yoder Typed or printed name	<input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>37,479</u>	(281) 970-4545 Telephone number	<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____	November 20, 2006 Date
<input type="checkbox"/> applicant/inventor.	<u>PG</u> Signature										
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<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____	November 20, 2006 Date										

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of:
Eric Michael Breitung et al.

Serial No.: 10/630,139

Filed: July 31, 2003

For: DELIVERY SYSTEM FOR
PECVD POWERED ELECTRODE

§
§
§ Group Art Unit: 1763
§
§ Examiner: Zervigon, Rudy
§
§
§ Atty. Docket: 121277-1/YOD/WOL
§ GERD:0598

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November 20, 2006 Date	 Seanelle Dice

PRE-APPEAL BRIEF REQUEST FOR REVIEW

In respect to the Advisory Action Mailed October 17, 2006, Appellants respectfully submit this Pre-Appeal Brief Request for Review. This Request is being filed concurrently with a Notice of Appeal.

In the Final Office Action mailed on July 19, 2006, the Examiner essentially reiterated the rejection formulated in the previous non-final Office Action. Because the Appellants believe that the rejections are improper, the present Appeal has been filed.

The Examiner rejected pending claims 1-18 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 10/449,975. The Examiner also rejected claims 1-18 under 35 U.S.C. §102(b). Of these, claims 1, 9 and 15 are independent.

Double Patenting Rejection

The Examiner provisionally rejected claims 1-18 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 10/449,975. However, because the copending application has not been allowed, Appellants will respond to a provisional double patenting rejection following final disposition of one or both applications. Therefore, because this rejection depends on the disposition of another application, Appellants are not requesting review of the double patenting rejection.

Rejections Under 35 U.S.C. § 102

Claims 1-18 are rejected under 35 U.S.C. § 102 (b) as being anticipated by Countrywood et al. (U.S. Patent No. 6,110,540 A, hereinafter, "Countrywood"). Of these, claims 1, 9 and 15 are independent.

Appellants respectfully disagree with the Examiner's recharacterization of the element "gas supply."

In the Office Action, the Examiner cited the element designated "98" in FIG. 3B of Countrywood to be equivalent to the "gas supply", the inlet line of which is recited in the claims. *See*, Office Action, page 8. This is not a reasonable interpretation of Countrywood.

Claim 1 of the application specifically recites a "heated gas inlet line for delivering a gas to a powered electrode" and "a coupling device located between the powered electrode and the gas inlet line". The element designated by reference numeral 98 in FIG. 3B of Countrywood is a direct current arc system that acts as a counter-electrode. As mentioned in col. 7, lines 19-22:

Element 108 is connected to the alternating current power supply 18 of FIG. 1 so that the direct current arc system 98 acts as a counter-electrode.

Further, col. 7, lines 15-16 of Countrywood, on the other hand, says that “[g]as is supplied by noble gas supply 120”.

Hence, the “counter electrode” in Countrywood designated by reference numeral 98 clearly cannot be an equivalent to the gas supply or gas delivery inlet line recited in the claims.

Independent claims 1, 9 and 15 cannot be anticipated by Countrywood.

Countrywood fails to teach a heated gas supply line.

All of the independent claims recite, in generally similar language, a *heated gas supply line* that supplies a gas to a powered electrode. Claim 1 specifically recites a heated gas inlet line for delivering a gas to a powered electrode. Similarly, claims 9 and 15 recite a heated gas inlet line.

Countrywood does not teach or even suggest a *heated gas supply*. Passages dealing with the supply of gas include the following:

The gas for the process plasma between the drum electrode 20 and the counter-electrode 12 is supplied by gas supply 22.

Countrywood, col. 4, lines 45-47;

* * *

In a preferred embodiment, the gas flowing from supply 22 includes a volatilized organosilicon compound, oxygen and an inert gas such as helium or argon.

Countrywood, col. 4, lines 61-63; and

* * *

A purge gas is supplied by gas supply 34. The gas of the purge gas from gas supply 34 is preferably an inert gas, such as helium, neon or argon, or a mixture thereof.

Countrywood, col. 5, lines 47-50.

Furthermore, Countrywood teaches away from a *heated* gas supply line and discloses a cooling system at the gas inlet:

A purge gas flows through a hollow refractory metal tube that is electrically connected to the alternating current power supply. The hollow electrode is allowed to heat up at one end to thermionic temperatures by *cooling* only the gas inlet end.

Countrywood, col. 3, lines 3-5 (emphasis added).

* * *

The device 30 includes a hollow manifold 36 through which cooling water can flow. The cooling water is supplied by water cooling system 38.

Countrywood, col. 5, lines 51-53. *See also*, FIG. 2A, items 36 and 38.

A cooling water system at the gas inlet can only be interpreted as teaching away from a *heated* gas supply because it would defeat the purpose of a *heated* gas supply. The present invention discloses the benefits of a heated gas supply that “can be routed directly through the powered electrode and fed into the reactor via the showerhead *without having a cold area* between the showerhead and gas inlet line.” *See*, Application, paragraph 10 (emphasis added). A *cold area* between a gas inlet and an electrode would specifically counteract any benefits of a *heated* gas supply. This *cold area* is exactly what Countrywood discloses. Hence, Countrywood *does not* teach a *heated* gas supply for delivering a gas to a powered electrode and actually teaches away from this claimed element.

Appellants therefore submit that Countrywood cannot anticipate claims 1, 9 or 15, or the claims depending therefrom.

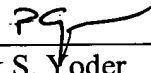
Conclusion

Accordingly, Appellants submit that a *prima facie* case of anticipation has not been made out because the Countrywood reference would not read on at least independent claims 1, 9, and 15. Moreover, all of the dependent claims are believed to be equally patentable by virtue of their dependency from an allowable base claim and for the subject matter they separately recite. Reconsideration and allowance of all pending claims are respectfully requested.

For all of the above reasons, Appellants respectfully request that the Panel instruct the Examiner to withdraw the outstanding rejections and allow the pending claims.

Respectfully submitted,

Date: November 20, 2006



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